HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT APPEAL NO.830 OF 2006

BETWEEN

Aji Kumar M.S.

.....

Appellant

And

The State of A.P.
Rep. by The District Collector,
Prakasam District & another

.....Respondents

Counsel for the Appellant : Shri P. Raghavender REddy

Counsel for the Respondents : Government Pleader for Assignments

Date: 10.08.2006

:: JUDGMENT ::

Per G.S. SINGHVI, CJ

This appeal filed by Shri Aji Kumar, who is presently posted in 739 Transport Workshop Company, Electrical Mechanical Engineers, C/o. 56 Army Post Office, Udhampur District (Jammu & Kashmir) and who has been deprived of the land assigned to him, is a typical example of the bureaucratic apathy towards the man in uniform.

The Facts:

On an application made by him, the appellant was assigned land measuring Ac.0.98 cents in Survey No.212/6 situated in Pellur Village, Ongole Mandal, Prakasam District vide proceedings dated 08.09.2004 issued by Mandal Revenue Officer, Ongole. He claims to have spent a sum of Rs.70,000/- for making the land cultivable. While he was posted at Udhampur in the State of Jammu & Kashmir, a news item was published in EENADU Telugu daily (District Edition), dated 15.02.2006 that some one had sold the assigned land by forging his signature. The concerned Mandal Revenue Officer took cognizance of the news item and issued notice dated 15-2-2006 for holding an enquiry into the alleged illegal transfer of the assigned land. After three days, he passed order dated 18.2.2006 for cancellation of the assignment. The relevant extracts of that order read as under:

> " Subsequently a news item was published in Eenadu daily district edition dt. 15.02.2006 alleging that this land of Ac.0.98 cents was sold and registered by a person with forged signatures. A detailed enquiry was conducted into the matter. The enquiry revealed that this assigned land was registered to one Sri Gangula Koteswara, S/o.Kotaiah of Ongole by one unauthorized person styling himself as the assignee Sri M. Aji Kumar. Further enquiry revealed that Sri Aji Kumar was on duty at Kashmir

on the date of registration of land that is on 13.7.2005. Hence it is clear that the land was registered with forged signatures. Further enquiry revealed that the assignee has not put the land to cultivation and thus violated conditions of grant. Further he has given this to an unauthorized person giving scope for malpractice and forgery.

In the circumstances stated above, the assignment made in favour of Sri M. Aji Kumar, S/o Sukumar for an extent of Ac.0.98 cents in S.No.212/6 of Pellur Village vide D.K.No.45/1414, dt. 8.9.2004 is hereby cancelled under violation of conditions of grant and land resumed to the Government."

The appellant challenged the aforementioned order in Writ Petition No.6844 of 2006. The learned Single Judge dismissed the same by recording the following observations:

" After hearing the learned counsel for the petitioner, Mr. K. Rama Krishna and perusing the impugned order, this Court is convinced that the land admeasuring Ac 0.98 in survey No.212/6 came to be assigned to the petitioner but a detailed enquiry was conducted pursuant to the news item published in 'Eenadu' Telugu daily revealed that a stranger claiming himself to be the petitioner sold away the land and under registered deed to Gangula Koteswara and that on the date of registration, the petitioner was on duty in Jammu & Kashmir i.e. 13.07.2005. In that view of the matter, the impugned order is certainly in any manner affect the right of the petitioner to the land if really the land was assigned. When the land was assigned to the petitioner, a stranger sold away the land and therefore, the Mandal Revenue Officer was justified in conducting enquiry an cancelling the assignment. If so advised, the petitioner may again approach the Mandal Revenue Officer personally for allotment of suitable land."

We have heard learned counsel for the appellant and learned Government Pleader for Assignments and are convinced that the order under challenge as well as the one passed by the Mandal Revenue Officer are liable to be quashed.

Insofar as order dated 18.02.2006 passed by the Mandal Revenue Officer is concerned, we have no hesitation to condemn the same as thoroughly arbitrary and grossly violative of the rules of natural justice. In the writ petition filed by him, the appellant categorically averred that order dated 18-2-2006 was passed without giving him notice and opportunity of hearing. The respondents did not get opportunity to controvert this assertion because the learned Single Judge disposed of the writ petition without issuing notice and without calling for counter-affidavit. In this view of the matter, we may have remanded the matter to the Single Bench for fresh adjudication of the writ petition after giving opportunity to the respondents to file counter-affidavit, but, in the peculiar facts of this case, we do not consider it necessary to adopt that course because the learned Government Pleader for Assignments fairly stated that no notice appears to have been served on the appellant proposing cancellation of the assigned land.

De hors the fair stand taken by the learned Government Pleader for Assignments, we are convinced that even if the Mandal Revenue Officer had any legitimate cause for initiation of proceedings for cancellation of assignment made in favour of the appellant, he was duty-bound to comply with the rule of audi alteram partem. It was the duty of the Mandal Revenue Officer not only to have issued notice to the appellant but also to ensure that the same is served on him. We can take judicial notice of the fact

that the place where the appellant was posted is continuously facing threat from terrorists across the border and the men in uniform are always on their toes. This fact, by itself, should have impelled the Mandal Revenue officer to be extra cautious before cancelling the assignment made in favour of the appellant. However, the fact of the matter is that the officer concerned passed order dated 18.02.2006 without even trying to find out whether the notice has been served on the appellant. The time gap of three days between the date on which notice was issued by the Mandal Revenue Officer and the date on which the order of cancellation was passed gives an impression that the officer concerned had pre-determined to cancel the assignment made in favour of the appellant.

We are further of the view that one of the reasons assigned by the Mandal Revenue Officer for cancellation of assignment is wholly extraneous and irrelevant. According to the Mandal Revenue Officer, the assignee had not put the land to cultivation and thus violated the conditions of grant. We are amazed with the audacious nature of this observation made by the Mandal Revenue Officer because as per the conditions of assignment, the land was required to be made cultivable within a period of three years from the date of allotment. The allotment was made in the year 2004. Therefore, the appellant was entitled to make the same cultivable by 2007. We have no doubt that if the officer concerned had glanced through the record, he would have refrained from recording the observation that the appellant had violated the conditions of assignment.

The learned Single Judge dismissed the writ petition without going into the merits of the appellant's challenge to order dated

18-2-2006. It is beyond our comprehension as to how the sale of the appellant's land by a stranger could warrant upholding of the order of cancellation passed by the Mandal Revenue Officer without complying with the basics of natural justice. The learned Single Judge, in our considered view, committed a serious error by non-suiting the appellant without even examining the core issue raised in the petition, namely, violation of the rules of natural justice.

For the reasons mentioned above, the appeal is allowed. Order dated 06.04.2006 passed by the learned Single Judge in Writ Petition No.6844 of 2006 is set aside. The writ petition filed by the appellant is also allowed and order dated 18-2-2006 passed by the Mandal Revenue Officer is quashed. As a consequence, the assignment of land made in favour of the appellant shall automatically stand restored.

In order to obviate any possibility of further litigation in the matter, we direct the Superintendent of Police, Ongole to conduct an enquiry into the sale of the land assigned to the appellant by an unknown person by preparing forged documents. It will be the duty of Superintendent of Police concerned to personally supervise the investigation/enquiry and ensure that the same is completed within a period of six months after due notice to the appellant.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

10.08.2006

ksld